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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/632,153	08/01/2003	Thomas Schueller	19531	1875

26480 7590 11/09/2004
LAWRENCE E. LAUBSCHER, SR.
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EXAMINER

SOTELO, JESUS D

ART UNIT PAPER NUMBER

3617

DATE MAILED: 11/09/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/632,153

Applicant(s)

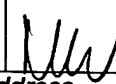
SCHUELLER, THOMAS

Examiner

Jesús D. Sotelo

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-61 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 27,28,30-35,37-43,45,46,48-52 and 54-60 is/are allowed.
- 6) ☒ Claim(s) 1-4,8,9,11,12,15,17,24,25,29,36,44,47,53 and 61 is/are rejected.
- 7) ☒ Claim(s) 5-7,10,13,14,16,18-23 and 26 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 May 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☒ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 10/31/03.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

DETAILED ACTION

1. Claims 1-19 are in the application.

Drawings

2. The proposed drawings filed 5/14/2004 are acceptable, however, the drawings should be submitted as a complete set.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. A broad range or limitation together with a narrow range or limitation that falls within the broad range or limitation (in the same claim) is considered indefinite, since the resulting claim does not clearly set forth the metes and bounds of the patent protection desired. Note the explanation given by the Board of Patent Appeals and Interferences in *Ex parte Wu*, 10 USPQ2d 2031, 2033 (Bd. Pat. App. & Inter. 1989), as to where broad language is followed by "such as" and then narrow language. The Board stated that this can render a claim indefinite by raising a question or doubt as to whether the feature introduced by such language is (a) merely exemplary of the remainder of the claim, and therefore not required, or (b) a required feature of the claims. Note also, for example, the decisions of *Ex parte Steigewald*, 131 USPQ 74 (Bd. App. 1961); *Ex parte Hall*, 83 USPQ 38 (Bd. App. 1948); and *Ex parte Hasche*, 86 USPQ 481 (Bd. App. 1949). In the present instance, claims 17, 29, 36, 44, 47, 53, and 61 recite the broad recitation "2% to 10%", and the claim also recites "preferably 3% to 6%" which is the narrower statement of the range/limitation.

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5. Claims 11, 12 and 15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The use of alternative language makes these claims indefinite.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1, 2, 4, 8, 9, 15 and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Kisevalter.

Kisevalter discloses a vessel propulsion system with a propulsion device 5 immersed partially in water; the propulsion device includes a cover partially enclosing the propulsion device forming a water conveying channel between the cover and the propulsion device. The outer circumferential surface of the propulsion device has several teeth 6 arranged one behind the other. Each tooth includes a leading edge and a trailing edge generally as in claim 9; The upper edge of the cover is above the vessel water line.

8. Claims 1 and 3 are rejected under 35 U.S.C. 102(b) as being anticipated by Ives.

Ives discloses a propulsion device generally as in claim 1 and including a revolving belt as in claim 3.

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 24-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kisevalter in view of Legoy et al.

Legoy et al disclose a propulsion system similar to that of Kisevalter and teaches providing the propulsion device with floats rotatable on the axis of rotation of the propulsion device. In view of these disclosures, it would have been obvious to one skilled in the art to provide the propulsion device of Kisevalter with floats generally as taught by Legoy et al. Such an arrangement would have been desirable to provide stability to the propulsion device in Kisevalter.

Allowable Subject Matter

11. Claims 5-7, 10, 13, 14, 16, 18-23, and 26 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.


12. Claims 27, 28, 30-35, 37-43, 45, 46, 48-52, and 54-60 are allowed.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jesús D. Sotelo whose telephone number is 703-308-2563. The examiner can normally be reached on Mon. - Fri. 6:00 AM -2:30 PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Samuel J. Morano can be reached on 703-308-0230. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Jesús D. Sotelo 11/4/04
Primary Examiner
Art Unit 3617
CPK 5-6D16 ☺

sotelo;jds
November 3, 2004